

**IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JUM SOON LIM,

Petitioner,

VS.

GLENN TRIVELINE,
Acting Field Office Director,
U.S. Immigration and Customs
Enforcement, et al.,

Respondents.

Immigration Case. No. 094 947 587

CIVIL CASE NO. 08 CV 4863

Hon. Judge Conlon

Magistrate Judge Brown

**PETITIONER'S MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Through the undersigned counsel, the petitioner JUM SOON LIM hereby moves this Honorable Court to temporarily enjoin the respondents from effectuating an administratively final expedited order of removal or deportation entered against her on September 18, 2006 while her underlying petition for habeas corpus review of the order is pending and unadjudicated before this Court. Ms. Lim is presently detained in the custody of the respondents.

I. History

On September 18, 2006 an expedited removal order under section 235(b)(1) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1225(b)(1), was entered against Ms. Lim by an officer of the Department of Homeland Security, U.S. Customs and Border Protection (CBP or the Department agency), at a U.S. land port-of-entry.

Exhibit 1 (copy of the I-860 Notice and Order of Expedited Removal). Unlike the common statutory removal procedures governing removal in the interior of the United States, an inadmissible or excludable “arriving alien” applicant for admission at a U.S. port-of-entry can be summarily deported without further review before an Immigration Judge or an administrative appeal, provided that she does not possess a credible or reasonable fear of return to her home country. *See generally* INA § 235, 8 U.S.C. § 1225 (expedited removal of an inadmissible arriving alien); *cf.* INA § 240, 8 U.S.C. § 1229a (removal proceedings before an Immigration Judge). On information and belief, notwithstanding the Department agency’s entry of the expedited removal order, the petitioner was simultaneously paroled into the United States under section 212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5), pursuant to an outstanding arrest warrant stemming from pending criminal charges and unresolved criminal proceedings in Cook County, Illinois. On February 6, 2007, the petitioner pleaded guilty and was found guilty for a failure to report an accident resulting in death or personal injury under Chapter 625 of the Illinois Compiled Statutes 5/11-401(b). She was thereafter sentenced to 5 years of incarceration. Exhibit 2 (copy of the certified disposition). On or about July 24, 2008, Ms. Lim was released from state custody to the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE or the Department agency) for removal. While the pertinent immigration statutes and regulations do not afford Ms. Lim with appellate review of the expedited removal order within an administrative tribunal, judicial review by way of a petition for habeas corpus is made available under INA § 242(e)(2), 8 U.S.C. § 1252(e)(2). Ms. Lim’s petition for a writ of habeas corpus is submitted with this Honorable Court concurrently with her motion for a temporary restraining order.

II. Standard of Review

In determining whether injunctive relief is warranted, the Court considers: (1) the likelihood of irreparable harm to the movant if relief is denied; (2) the likelihood of harm to the non-moving party if relief is granted; (3) the likelihood that the movant will prevail on the merits of his underlying petition for habeas corpus; and (4) the public interest. *See Lucacela v. INS*, 161 F.3d 1055 (7th Cir. 1998).

III. Jum Soon Lim Merits a Temporary Restraining Order to Prevent the Respondents from Deporting Her While She Seeks Judicial Review of the Expedited Removal Order.

The petitioner submits that she meets the third prong requirement of demonstrating a likelihood of prevailing on the merits of her habeas action provided that this Court adopts the reasoning and rationale of the District Court of the Eastern District of Michigan in *American-Arab Anti-Discrimination Comm. v. Ashcroft*, 272 F.Supp.2d (E.D. Mich. 2003) (hereinafter “AAADC”). In AAADC, the Federal District Court found that the government agency unlawfully vitiates a noncitizen’s due process rights when expedited removal procedures are instituted against him after such alien has been paroled into the country. In this respect, Ms. Lim is similarly situated with the AAADC petitioners in that her expedited removal was coupled with a parole into the interior of the United States. Thus, Ms. Lim requests this Court in habeas review to set aside or vacate her expedited removal order without prejudice to the respondents to initiate removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a before an Immigration Judge in which she is afforded the full array of procedural safeguards and avenues to administrative appellate review concomitant with the statutory provisions governing section 240 removal proceedings.

Additionally, it is without question that the likelihood of harm to Ms. Lim is great as a deportation to South Korea would arguably strip her of habeas standing and this Court's jurisdiction to grant habeas relief. A deportation under the expedited removal statute carries with it a five-year bar to a visa admission into the United States. INA § 212(a)(9)(A)(i), 8 U.S.C. § 1182(a)(9)(A)(i). Conversely, the respondent's deportation objective will not be prejudiced should this Court grant injunctive relief. Presently, Ms. Lim remains detained in ICE custody without the legal right to a bond review before an Immigration Judge. *Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1999) (an Immigration Judge has no authority over the apprehension, custody, and detention of arriving aliens and is therefore without authority to consider the bond request of an alien returning pursuant to a grant of advance parole). Thus, respondents will not be precluded from carrying out its deportation should Ms. Lim prove unsuccessful in her habeas challenge to the agency's expedited removal order.

IV. Conclusion

For the foregoing reasons, Ms. Lim respectfully requests this Court to enjoin the respondents from executing the administratively final expedited removal order entered against her while she seeks judicial review of the agency's order in habeas corpus proceedings. Ms. Lim hereby reserves her right to surreply any response to this motion. Respectfully submitted,

s/ David Cook

Date: August 26, 2008

David Cook
Attorney for Jum Soon Lim

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that in accordance with Fed. R. Civ. P. 5, L.R. 5.5, and the General Order on Electronic Case Filing (ECF), the PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION was served pursuant to the District Court's ECF system as to ECF filers on August 26, 2008, to the following ECF filers, or by regular mail to any non-ECF filers at this address:

Sheila McNulty
Spec. AUSA for USICE
219 S. Dearborn St., 5th Floor
Chicago, IL 60604
(312) 353-8788

s/ David Cook

David Cook
Kenneth Y. Geman and Associates
33 N. LaSalle St., Ste. 2300
Chicago, IL 60602
(312) 263-6114 phone
(312) 263-0104 fax
david@gemanimmigrationlaw.com

TABLE OF EXHIBITS

- Exhibit 1: Form I-860 Notice and Order of Expedited Removal under Section 235(b)(1) of the Immigration and Nationality Act.
- Exhibit 2: Certified Disposition of 625 ILCS 5/11-401(b).

EXHIBIT 1

Office of Detention and Removal Operations
U.S. Department of Homeland Security
101 West Congress Parkway
Chicago, Illinois 60605



**U.S. Immigration
and Customs
Enforcement**

Facsimile Transmission

TO: David Cook, Geman & Associates

FAX Number: 312-263-0104

FROM: C. Krznaric, DO

FAX Number:

DATE: 20 August 2008

NUMBER OF PAGES, INCLUDING COVER PAGE: 2

**Copy of Determination of Inadmissability & Order of Removal in re:
Jum Soon LIN (A94 947 587)**

of Justice
Naturalization Service

Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

File No: 2094 947 587

Date: September 18, 2006

In the Matter of: JUN S. LIM

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Immigration and Naturalization Service has determined that you are inadmissible to the United States under section(s) 212(a) ☒ (6)(C)(i); ☐ (6)(C)(ii); ☒ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

- 1) On or about September 17, 2006, you applied for admission into the United States.
- 2) You verbally declared yourself to be a Lawful Permanent Resident of the United States.
- 3) You are a citizen and national of Korea.
- 4) You have no legal right to either enter, pass through, or remain in the United States.
- 5) You willfully misrepresented your true identity and are not in possession of a valid entry document as is required by the Act.

H. HUIZAR
CBP OFFICER

Name and title of immigration officer (Print)



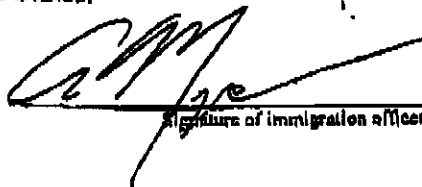
Signature of immigration officer

ORDER OF REMOVAL UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

A. MURGA
SUPERVISORY CBP OFFICER

Name and title of immigration officer (Print)



Signature of immigration officer

O. CHAMBERS
CBP CHIEF

Name and title of supervisor (Print)

Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on 09/18/06

(Date)

Signature of immigration officer

EXHIBIT 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 05CR2690901

JUM

LIM

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

625-5/11-401(b) F FAILURE REPORT ACCIDENT/DEATH
The following disposition(s) was/were rendered before the Honorable Judge(s):

| | |
|---|---------------|
| 11/22/05 IND/INFO-CLK OFFICE-PRES JUDGE | 12/08/05 1701 |
| 05CR2690901 ID# CR100880860 | |
| 12/08/05 TRANSFERRED TO SUBURBAN DIST | 12/08/05 0200 |
| BIEBEL, PAUL JR. | |
| 12/08/05 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 12/08/05 CONTINUANCE BY AGREEMENT | 01/04/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 01/04/06 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 01/04/06 CONTINUANCE BY AGREEMENT | 03/07/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 03/07/06 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 03/07/06 CONTINUANCE BY AGREEMENT | 04/07/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 04/07/06 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 04/07/06 CONTINUANCE BY AGREEMENT | 05/15/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 05/15/06 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 05/15/06 CONTINUANCE BY AGREEMENT | 06/21/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 06/16/06 DEFENDANT ON BOND | |
| HOWARD, GARRITT E. | |
| 06/16/06 CASE ADVANCED | |
| HOWARD, GARRITT E. | |
| 06/16/06 MOTION DEFT - CONTINUANCE - MD | 06/30/06 0297 |
| HOWARD, GARRITT E. | |

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 05CR2690901

JUM

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CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

| | |
|--|---------------|
| The States Attorney of Cook County filed an INDICTMENT/INFORMATION | |
| 06/30/06 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 06/30/06 CONTINUANCE BY AGREEMENT | 08/08/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 08/08/06 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 08/08/06 CONTINUANCE BY AGREEMENT | 09/11/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 09/11/06 DEFENDANT ON BOND | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 09/11/06 CONTINUANCE BY AGREEMENT | 10/23/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 09/27/06 DEFENDANT NOT IN COURT | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 09/27/06 NO BAIL | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 09/27/06 PETITION FOR VOBB FILED | |
| CHAMBERS, TIMOTHY J. | 00/00/00 |
| 09/27/06 WARRANT OUTSTANDING | |
| CHAMBERS, TIMOTHY J. | 00/00/00 |
| 09/28/06 WARRANT SENT TO POLICE AGENCY | |
| 09/28/06 WARR ORD, WARR ISSUED | |
| CHAMBERS, TIMOTHY J. | 00/00/00 |
| 10/03/06 DEFENDANT IN CUSTODY | |
| CHAMBERS, TIMOTHY J. | 00/00/00 |
| 10/03/06 DEFENDANT NOT IN COURT | |
| CHAMBERS, TIMOTHY J. | 00/00/00 |
| 10/03/06 PREVIOUS ORDER TO STAND | |
| CHAMBERS, TIMOTHY J. | 00/00/00 |
| 10/23/06 REINSTATEMENT | CALL 00/00/00 |
| ORR, MARCIA B. | |
| 10/23/06 CONTINUANCE BY AGREEMENT | 11/13/06 |
| ORR, MARCIA B. | |
| 10/25/06 RECALL/EXEC SENT TO POLICE AGY | 00/00/00 |
| 10/28/06 WARR RETURNED, EXECUTED, FILED | 00/00/00 |
| ZAFIRATOS JAMES ALBERT | |
| 10/28/06 BOND TO STAND | 00/00/00 |
| ZAFIRATOS JAMES ALBERT | |

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 003

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 05CR2690901

JUM

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| | |
|--|---------------|
| The States Attorney of Cook County filed an INDICTMENT/INFORMATION | |
| 10/28/06 CONTINUANCE BY ORDER OF COURT | 10/30/06 0297 |
| ZAFIRATOS JAMES ALBERT | |
| 10/28/06 SPECIAL ORDER | 00/00/00 |
| FROM PRINTOUT - NO FILE IN COURT | |
| ZAFIRATOS JAMES ALBERT | |
| 10/30/06 RECALL/EXEC SENT TO POLICE AGY | 00/00/00 |
| 10/30/06 DEFENDANT IN CUSTODY | 00/00/00 |
| SUTKER-DERMER, SHELLEY | |
| 10/30/06 PRISONER DATA SHEET TO ISSUE | 00/00/00 |
| SUTKER-DERMER, SHELLEY | |
| 10/30/06 WARR RETURNED, EXECUTED, FILED | 00/00/00 |
| SUTKER-DERMER, SHELLEY | |
| 10/30/06 BOND TO STAND | 00/00/00 |
| SUTKER-DERMER, SHELLEY | |
| 10/30/06 CONTINUANCE BY ORDER OF COURT | 10/31/06 0297 |
| SUTKER-DERMER, SHELLEY | |
| 10/30/06 RECALL/EXEC SENT TO POLICE AGY | 00/00/00 |
| 10/31/06 DEFENDANT IN CUSTODY | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 10/31/06 PRISONER DATA SHEET TO ISSUE | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 10/31/06 CONTINUANCE BY AGREEMENT | 11/27/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 11/27/06 DEFENDANT IN CUSTODY | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 11/27/06 PRISONER DATA SHEET TO ISSUE | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 11/27/06 MOTION DEFT - CONTINUANCE - MD | 12/05/06 0297 |
| CHAMBERS, TIMOTHY J. | |
| 12/05/06 DEFENDANT IN CUSTODY | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 12/05/06 PRISONER DATA SHEET TO ISSUE | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |
| 12/05/06 CONTINUANCE BY AGREEMENT | 01/26/07 0297 |
| CHAMBERS, TIMOTHY J. | |
| 01/26/07 DEFENDANT IN CUSTODY | 00/00/00 |
| CHAMBERS, TIMOTHY J. | |

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 05CR2690901

JUM

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| | | |
|--|---------------|--------|
| The States Attorney of Cook County filed an INDICTMENT/INFORMATION | | |
| 01/26/07 PRISONER DATA SHEET TO ISSUE | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 01/26/07 MOTION DEFT - CONTINUANCE - MD | 02/06/07 0297 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 DEFENDANT IN CUSTODY | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 PLEA OF GUILTY | CALL 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 JURY WAIVED | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 PRESENTENCE INVESTIGATION WAIV | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 FINDING OF GUILTY | CALL 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 DEF SENTENCED ILLINOIS DOC | CALL 00/00/00 | |
| 5 YRS | | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 CREDIT DEFENDANT FOR TIME SERV | 00/00/00 | |
| 103 DYS | | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 FINES COSTS FEES PER DRFT ORD | 00/00/00 | \$ 560 |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 BAIL REVOKED | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 DEF ADVISED OF RIGHT TO APPEAL | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 LET MITTIMUS ISSUE/MITT TO ISS | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 BLOOD TEST ORDERED | 00/00/00 F | 1 |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 WARRANT QUASHED | 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/06/07 CHANGE PRIORITY STATUS | M. 00/00/00 | |
| CHAMBERS, TIMOTHY J. | | |
| 02/07/07 RECALL/EXEC SENT TO POLICE AGY | 00/00/00 | |

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 05CR2690901

JUM

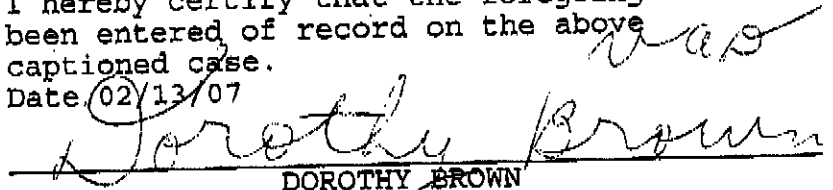
LIM

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

I hereby certify that the foregoing has
been entered of record on the above
captioned case.
Date 02/13/07


DOROTHY BROWN
CLERK OF THE CIRCUIT COURT OF COOK COUNTY